

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Moran	Team: Squad #6	CCRB Case #: 202000545	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/19/2020 4:20 PM	Location of Incident: East 125th Street and 1st Avenue	Precinct: 25	18 Mo. SOL 7/19/2021	EO SOL 3/5/2022	
Date/Time CV Reported Sun, 01/19/2020 7:05 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 01/19/2020 7:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Weber	26421	948439	025 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Briana Juliano	01555	959717	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Weber	Abuse: Police Officer Kevin Weber questioned § 87(2)(b)	
B.POM Kevin Weber	Abuse: Police Officer Kevin Weber searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Kevin Weber	Abuse: Police Officer Kevin Weber frisked § 87(2)(b)	

Case Summary

On January 19, 2020, § 87(2)(b) reported this complaint with the CCRB's call processing system.

On January 19, 2020, at approximately 4:20 p.m., PO Kevin Weber and PO Briana Juliano from the 25th Precinct, stopped § 87(2)(b)'s vehicle on East 125th Street between 1st and 2nd Avenue in Manhattan. PO Weber told § 87(2)(b) that the vehicle did not have a front license plate, was unregistered, and did not have an inspection sticker. PO Weber then asked § 87(2)(b) twice if there was anything illegal in the vehicle or on § 87(2)(b) (**Allegation A: Abuse of Authority** – § 87(2)(g) § 87(2)(b) told him there was nothing illegal on him or in his vehicle and he did not consent to a search of the vehicle. PO Weber then searched § 87(2)(b)'s vehicle front compartments and back seat (**Allegation B: Abuse of Authority** – § 87(2)(g) PO Weber then frisked § 87(2)(b)'s jacket and upper body (**Allegation C: Abuse of Authority** – § 87(2)(g) § 87(2)(b) Nothing was recovered. § 87(2)(b) received four summonses for unregistered motor vehicle, uninspected motor vehicle, operating without insurance, and improper plates (BR 01).

Two BWC and two TARU videos were obtained for this incident (BR 02-05).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kevin Weber questioned § 87(2)(b)

In PO Weber's BWC at 7:23 minutes, PO Weber asked § 87(2)(b) whom the car belonged to because it was not titled to him (BR). § 87(2)(b) told him the title was in his mother's name. At 7:37 minutes PO Weber asked where § 87(2)(b) picked up the car. § 87(2)(b) told him it was from a mechanic. PO Weber then asked § 87(2)(b) if there was anything in the vehicle that he should not have. § 87(2)(b) responded that there was nothing in the vehicle. PO Weber then asked if he had an objection to him checking the vehicle. § 87(2)(b) said he was not going to consent to a search. At 8:36 minutes PO Weber asked if he had anything in the car that he should not have. § 87(2)(b) told him no. At 9:26 minutes PO Weber asked § 87(2)(b) if there was anything illegal in his vehicle.

§ 87(2)(b) testified that he continued to drive about a block and a half after the officers signaled for him to pull over because he wanted to pull over in a safe area with less traffic. He had both of his hands on the steering wheel the entire time he drove after they signaled for him to stop and he never reached anywhere or towards his center console. PO Weber told § 87(2)(b) that his vehicle did not have a front license plate and § 87(2)(b) explained that they sometimes went missing. He did not give any other reason why he was stopped. PO Weber asked him multiple times if he had anything on him or in the vehicle. § 87(2)(b) told PO Weber that he did not have anything illegal and that he did not consent to a search of his vehicle.

PO Weber testified that after he indicated for § 87(2)(b) to stop, § 87(2)(b) continued to drive a full blocks length before he stopped 20 seconds later. PO Weber was about one car lengths away or approximately 30 feet from § 87(2)(b)'s vehicle. Both vehicles were still in motion. § 87(2)(b)'s rear window was not tinted, and the back seats were up, but PO Weber could clearly see through the back window and the rearview mirror. During that time, § 87(2)(b) reached down into the center console and fidgeted. § 87(2)(b)'s body leaned down over to the right and his arm was extended. PO Weber could not see what § 87(2)(b) did with his

arm, but he rummaged in the center console for about ten seconds. PO Weber could not see if § 87(2)(b) had any items in his hands or if anything came out or was removed from the console. He could not see any covering being opened. PO Weber thought that § 87(2)(b) might have taken whatever contraband was in his vehicle and put it on his person. PO Weber did not have any specific suspicions § 87(2)(b) was in possession of contraband, but his irregular movements when he reached into the center console was not natural. There were no other actions that indicated § 87(2)(b) had contraband, no specific type contraband PO Weber thought § 87(2)(b) was in possession of and PO Weber did not have any specific belief that § 87(2)(b) was in possession of a weapon. PO Weber did not recall if he asked § 87(2)(b) if he had anything in his vehicle that he should not have or the contents of his vehicle. PO Weber did not recall if he asked § 87(2)(b) if there was anything illegal in his vehicle or on his person.

PO Juliano testified that § 87(2)(b) did not immediately comply with their order to stop and continued to drive for a block and a half. PO Juliano was directly behind § 87(2)(b)'s vehicle. As § 87(2)(b) drove, PO Juliano observed through § 87(2)(b)'s back window, that his head and shoulders kept ducking and reaching down between the seat and center console. PO Juliano could not see if § 87(2)(b) had anything in his hands. Either PO Weber or PO Juliano commented that § 87(2)(b) was reaching for something. PO Juliano believed § 87(2)(b) was in possession of contraband because he looked like he was trying to hide something between the seat and center console. Additionally, § 87(2)(b)'s behavior was suspicious because he kept turning away from PO Juliano to look at his vehicle while PO Weber searched it and did not stop immediately after the officers signaled for him to pull over. She did not have a specific thing in mind that he was trying to hide. PO Juliano did not remember if PO Weber asked § 87(2)(b) if he had anything in his vehicle that he should not have. She did not remember if PO Weber asked § 87(2)(b) if he had an objection to searching his vehicle. PO Juliano did not recall if PO Weber asked § 87(2)(b) if there was anything illegal in his vehicle.

§ 87(2)(g)

A framework with four levels of police-citizen encounters was established in People v. De Bour, 40 N.Y.2d 210 (1976), in which the second level, the common-law right to inquire, necessitates founded suspicion that criminal activity is afoot. This founded suspicion may be based upon the knowledge possessed at that moment and any reasonable inferences (BR 15). Once the police officer's questions become extended and accusatory and the officer's inquiry focuses on the possible criminality of the person approached, this is not a simple request for information. Where the person approached from the content of the officer's questions might reasonably believe that he or she is suspected of some wrongdoing, the officer is no longer merely asking for information. The encounter has become a common-law inquiry that must be supported by founded suspicion that criminality is afoot New York v. Hollman, 79 N.Y.2d 181 (1992) (BR 28). Officers may not, without founded suspicion for the inquiry, ask occupants of a lawfully stopped vehicle if they possess any weapons. The framework established by De Bour applies with equal force to traffic stops. A police officer who asks a private citizen if he or she is in possession of a weapon must have founded suspicion that criminality is afoot People v. Garcia, 20 N.Y.3d 317 (2012). In People v. Garcia, it was also alleged that the occupants of the vehicle made furtive movements and appeared nervous (BR 16).

Both PO Weber and PO Juliano testified that § 87(2)(b) did not immediately comply with their order for him to stop and continued to drive for another block. During that time, they both observed § 87(2)(b) reach down into the center console. Neither officer saw if § 87(2)(b) had anything in his hands or if anything was removed. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Kevin Weber searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Weber searched § 87(2)(b)'s vehicle.

In PO Weber's BWC footage, at the 9:00 mark, § 87(2)(b) informed PO Weber that he did not consent to his vehicle being searched. § 87(2)(b) was standing at the rear of his vehicle with both PO Weber and PO Juliano. § 87(2)(b) then told PO Weber that there was nothing illegal in his vehicle and PO Weber said okay and told § 87(2)(b) to keep his hands out in front of him. PO Weber then returned to § 87(2)(b)'s vehicle. At the 9:39 mark, PO Weber opened the front driver's side door (BR). He then entered the vehicle and opened the center console. PO Weber took multiple items out of the console and then put them back. He searched through a cup in the front cup holder. PO Weber exited the front at 11:09 minutes and entered the driver's side back door. He moved to the back of the vehicle, but the video is black from 11:27 to 11:32 minutes. PO Weber then opened the backseat middle console. At 12:06 minutes, PO Weber opened the passenger's side front door and entered. At 12:30 minutes, PO Weber went through the glove compartment and center console again.

§ 87(2)(b) testified that PO Weber told him to exit and step to the back of his vehicle. PO Weber walked § 87(2)(b) to the back of his vehicle where PO Juliano stood. PO Weber then walked back to the driver's side door of § 87(2)(b)'s vehicle and used his flashlight to search § 87(2)(b)'s vehicle. § 87(2)(b) had a side view of his vehicle and could see PO Weber open the front door and enter his vehicle. PO Weber then searched the entire front area of the vehicle.

PO Weber testified that when he returned to § 87(2)(b)'s vehicle, he ordered § 87(2)(b) to exit because he reached into the center console before completely stopping the vehicle. There were no additional reasons why PO Weber asked § 87(2)(b) to step out. § 87(2)(b) complied, and PO Weber brought him to the back of his vehicle to stand with PO Juliano. PO Weber searched the vehicle to check the lunge able, grabbable area. He searched the center console area, the floorboard on the passenger side, and looked at the back of the vehicle. The center console area consisted of an open area with stuff thrown on the floor and a small cubby

located under the radio. He did not open any other compartments. He did not recover anything. To PO Weber's understanding, he has probable cause to search a vehicle if there are furtive movements, probable cause, the odor of controlled substances, and consent. In this case, PO Weber believed § 87(2)(b) reaching towards the center console was considered a furtive movement and was cause for him to search the vehicle because they indicated he might have contraband. PO Weber did not recall asking § 87(2)(b) for consent to search his vehicle. He did not recall if § 87(2)(b) ever objected or consented to PO Weber searching his vehicle.

As PO Juliano stood with § 87(2)(b) at the rear of the vehicle, PO Weber was on the driver's side of § 87(2)(b)'s vehicle. PO Weber entered the vehicle to check the area between the center console and seat, where § 87(2)(b) reached. PO Juliano could not clearly see the center console area because she was too short but there was a gap between the seats. PO Juliano did not see if PO Weber checked anywhere else in the vehicle. PO Weber told PO Juliano there was nothing there and nothing to worry about. PO Juliano did not know if PO Weber recovered anything. PO Weber did not say if he checked anywhere else in the vehicle besides the center console and seat.

Any search and seizure case involving a vehicle stop requires the balancing of two important considerations: (1) the motorist's important privacy interest in his or her vehicle and (2) the inordinate risk that police officers face during a stop. In balancing both of those considerations, the Court of Appeals has long recognized that "[a] police officer acting on [1] *reasonable suspicion* that criminal activity is afoot and [2] on an articulable basis to fear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that is actually necessary to protect himself from harm." Consequently, conclusory assertions by police officers that a car's occupants have engaged in "furtive" behavior or caused them apprehension cannot validate further intrusions into the interior of a vehicle. The combination of (1) movements within a car suggesting that the defendant was reaching for something that might be a weapon and (2) *some other suggestive factor(s)* was sufficient to justify the limited intrusion of search the area. While those movements alone would not justify a police intrusion into the vehicle, the presence of additional factors justified the officers' reasonable suspicion that there could be a weapon in the vehicle that posed an "actual and specific danger" People v. Newman, 96 A.D.3d 34 (2012) (BR 17).

It is undisputed that PO Weber searched § 87(2)(b)'s center console, including the front passenger glove compartment and cup holders, and the back seats. PO Weber testified that he searched the vehicle because § 87(2)(b) made furtive movements towards the center console before he stopped his vehicle, which lead PO Weber to believe he was in possession of contraband.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Kevin Weber frisked § 87(2)(b)

It is undisputed that PO Weber frisked § 87(2)(b) on his upper body, jacket pockets, and waistline.

In PO Weber's BWC, at the 13:33 mark, PO Weber finished searching § 87(2)(b)'s vehicle and walked to the rear of his vehicle. At 13:49 minutes, PO Weber frisked § 87(2)(b)'s front left jacket pocket. He then put his hand under § 87(2)(b)'s bottom part of his jacket. PO Weber touched the bottom right and then top right part of § 87(2)(b)'s jacket. PO Weber then unzipped § 87(2)(b)'s jacket and touched the inside of his jacket. PO Weber frisked the front of § 87(2)(b)'s upper body and then the back of his upper body.

§ 87(2)(g) PO Weber exited § 87(2)(b)'s vehicle and saw that § 87(2)(b) was handcuffed at the rear of the vehicle. PO Weber did not recover anything during the vehicle search. He frisked § 87(2)(b) for the officers' safety because he was in handcuffs, which meant an officer feared for their safety. As PO Juliano placed § 87(2)(b) in handcuffs, he assumed PO Juliano feared for her safety. PO Juliano never verbally articulated this fear to PO Weber. Additionally, PO Weber thought that § 87(2)(b) might have contraband on him. PO Weber did not have any specific suspicions § 87(2)(b) was in possession of contraband, but § 87(2)(b)'s irregular movements of reaching into the center console were not natural. There were no other actions that indicated § 87(2)(b) had contraband. There was no specific type contraband PO Weber thought § 87(2)(b) was in possession of. PO Weber did not have any specific belief that § 87(2)(b) was in possession of a weapon and he could not see any bulges on his coat or person. PO Weber did not recover anything.

PO Juliano did not see § 87(2)(b)'s pocket area before he was patted down because he was seated. PO Juliano did not remember if there were any bulges because § 87(2)(b) had on a big jacket. PO Juliano placed § 87(2)(b) in handcuffs for safety concerns because he continuously turned his body and took steps towards PO Weber while his vehicle was searched and refused to comply with multiple orders to not face his vehicle. PO Juliano did not know what § 87(2)(b) was going to do, so she placed him in handcuffs to better control the situation. PO Juliano did not hear PO Weber ask to frisk § 87(2)(b) but observed PO Weber patting § 87(2)(b) on his front pocket area through the vehicle windows. PO Juliano could not tell if PO Weber frisked § 87(2)(b)'s pants or jacket. PO Juliano did not know if there was any other reason to frisk § 87(2)(b).

A frisk is authorized when the member of the service reasonably suspects the person is armed and dangerous. A frisk may not be conducted to locate evidence of a crime, such as drugs. NYPD Patrol Guide Procedure 212-11 (BR 18). A frisk requires reliable knowledge of facts providing reasonable basis for suspecting that the individual to be subjected to that intrusion is armed and may be dangerous People v. Russ, 61 N.Y.2d 693 (1984) (BR 29).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 21).
- PO Weber has been a member of service for 11 years and has been a subject in ten CCRB complaints and 20 allegations, none of which were substantiated. § 87(2)(g)
- PO Juliano has been a member of service for five years and has been a subject in four CCRB complaints and 11 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of March 6, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR 24).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 6

Investigator: Julia Moran Inv. Julia Moran 11/23/2021
Signature Print Title & Name Date

Squad Leader: Jessica Peña IM Jessica Peña 11/12/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date